

The 3rd May, 1982

No. 9(1)82-6 Lab/3573.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Haryana Urban Development Authority, Division No. 3, Sub-Division No. 7, Sector 9, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD.

Reference No. 296 of 1980

between

SHRI BAL RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.  
HARYANA URBAN DEVELOPMENT AUTHORITY, DIVISION NO. 3, SUB-DIVISION NO. 7, SECTOR 9, FARIDABAD.

Present :—

Shri Roshan Lal Sharma for the workman.

Shri K. L. Narula for the respondent management.

#### AWARD

This reference No. 296 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/19-80/35923, dated 8th July, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Bal Ram, workman and the respondent management of M/s. Haryana Urban Development Authority, Division No. 3, Sub-Division No. 7, Sector 9, Faridabad. The term of the reference were :—

Whether the termination of services of Shri Bal Ram was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman is that he joined the service of the respondent on 13th February, 1978 as helper and after that he worked as complaint attendant and drawing Rs 256 per month. The workman was terminated without any cause and reason on 10th December, 1979. The termination is illegal and without jurisdiction and the workman is entitled for his reinstatement with continuity of service, and with full back wages.

The case of the respondent according to the written statement is that this court has no jurisdiction to try this reference as this claimant does not come within the definition of under section 2(s) of the Industrial Disputes Act, 1947. The Public works Department HUDA does not come within the definition of Industry as defined in section 2 (s) of the Industrial Disputes Act, 1947. The demand notice is addressed to the Manager, Haryana Urban Development Authority and there is no post of a Manager in HUDA and this notice should have been given to the Chief Administrator, HUDA, Chandigarh and the application is not maintainable. The claimant was working on muster roll up to 30th September, 1979 and never got Rs. 256 p.m. and worked on one month sanction from 1st October, 1979 to 10th December, 1979. He was not taken from the employment exchange and sanction was purely temporary and no termination notice was required. No appointment letter was given to the claimant. So the reference is liable to be rejected.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the claimant workman is not a workman under the definition of Industrial Disputes Act, 1947 ? If so, to what effect ?
- (2) Whether the reference is not maintainable in the present form ? If so, to what effect ?
- (3) Whether the termination of services of the workman is justified and in order? If not, to what relief is he entitled ?
- (4) Relief?

Issue No. 1 and 2 are preliminary issues and decided first as ordered by my predecessor. The evidences on the preliminary issues were taken as given by the parties and my predecessor decided issues No. 1 and 2 in favour of the workman by his order dated 4th May, 1981. After this decision the respondent gave an application for additional issue for gainfull employment which was as under :—

Whether the workman is gainfully employed within the period of this case." If so, to what effect ?

After deciding the preliminary issue in favour of the workman, Now, two issues remained to be decided.

My findings on issues are as under: —

Issue No. 3:—

As per reference?

On this issue the representative of the respondent argued that the workman was employed on muster roll basis as casual employee from 9th February, 1978 and worked upto 29th September, 1979 at different places in a different capacity as Beldar as Complant attendant as shown in Ex. M-2. From 1st October, 1979 to 10th December, 1979 the workman worked as work-charge employee on monthly sanction taken from the Head of the department as stated by the respondent witness Shri Punkaj Kumar, S.D.O. HUDA as MW-1 in his cross-examination and Shri Ashok Kumar, J.E. as MW-2 and he was terminated when there was no work with the respondent. The workman was not issued appointment letter as not required for the casual labour and also not given any termination letter because the workman was a casual labour appointed for the work in hand. So the workman can not claim his reinstatement because he was not a regular employee of the respondent. The workman was not called through the employment exchange as required by the rules of the Government. So the termination of workman is justified and there is nothing wrong in the orders. So the workman was not required any procedure of the law, to remove him.

The workman's representative argued that the workman started his work with the respondent from 9th February, 1978 to 10th December, 1979 continuously and completed 240 days for the continuous service required under the law. There is no brake in the service as shown in Ex. M-2 of the respondent. The respondent cannot retrench the workman in the way they have done. They have not complied with the mandatory provisions of section 25-F of the Industrial Disputes Act, which is very essential for the workman, in the termination. The workman was not given any notice for his termination and no money was offered to him at the time of the termination. So the respondent has retrenched a permanent employee, who has become permanent after a continuous service of two years, and completed 240 days as required under the law, and he cannot be retrenched in the manner the respondent has done. So the order of retrenchment of the workman was illegal. The respondent witness MW-1 has admitted this fact in his cross examination that the workman has worked with the respondent from 2/78 to 12/79 and the respondent witness MW-2 has also admitted in his cross-examination that other person have been employed in place of the workman. It shows that the respondent has not cared for the provisions of the law. If they want to employ any other person in his place the workman should have given preference under section 25-H of the Industrial Disputes Act, which has not been given to the workman and so the orders of the respondent for retrenchment and termination is illegal and un-justified.

After hearing the arguments of both the parties, and going through the file I am of the view that the workman worked with the respondent for about 23 months and after this continuous service he become a permanent employee of the respondent, after completion of 240 days in a year under the law, and he cannot be terminated in the manner which he was terminated. The witness of the respondent MW-2 has admitted this fact that they have employed another person in place of the workman clearly shows that there was a work with the respondent and termination is illegal. The respondent did not comply with the provisions of section 25-F of the Industrial Disputes Act, and the order of termination is illegal. The respondent has demanded in their statement that the workman was working as work-charge from 1st October, 1979 after completing 1½ years on muster roll and if he was allowed to remain in service he can have the right of a regular employee after some time which was snatched by the respondent without any reason given in the written statement for the statement or the witnesses. So this issue is decided in favour of the workman and against the respondent.

Issue No. 4:

Issue No. 4 is for the additional issue for the gainful employment. The respondent has produced one witness to prove this issue as MW-3. Shri Gobind Parshad of New Form factory, Ballabgarh who has stated that the workman joined the service in the factory on 20th February, 1981 at a salary of Rs. 265/-p. m. It is presumed that the workman is working in the factory as stated by the witness MW-3. The respondent's representative argued on this issue that the workman is gainfully employed and he will become permanent in the said factory after three months. Whereas in HUDA he was working on daily wages. It is clear that after retrenchment from HUDA he was earning much more then as he was drawing in HUDA. In these circumstances, he is not entitled for any relief.

The representative of the workman argued on this issue that the respondent has produced the witness who has stated that the workman joined on 20th February, 1981 and remained vacant upto 20th February, 1981 after removal from the service. So it is a fact that the workman has not remained in service throughout the period.

After hearing the arguments of both the parties, I am of the view that as the order of termination of the workman is not justified. The workman is entitled for his reinstatement with continuity of service and with half back wages as he was employed from the last few month in M/s. New Foun Factory, Ballabgarh.

This be read in answer to this reference.

Dated the 19th March, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endorsement No. 697, dated 31st March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

The 28th June, 1982

No. 9 (1) 82-6Lab./5766.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Haryana Land Reclamation and Development Corporation Ltd., S. C. O. 32-34, Sector 17-C, Chandigarh:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 161 of 1980 (Reference No. 366-F of 1981)

between

SHRI SISHPAL SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S  
HARYANA LAND RECLAMATION AND DEVELOPMENT CORPORATION LIMITED,  
S.C.O. 32-34, SECTOR 17-C, CHANDIGARH.

Présent.—

Shri Raghubir Singh for the workman.

Shri Zile Singh for the respondent management.

#### AWARD

This reference No. 161/80 (Reference No. 366-Fbd 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana,—vide his order No. ID/KNL/66-80/35100, dated 1st July, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Sishpal, workman and the respondent management of M/s. Haryana Land Reclamation and Development Corporation Limited, S. C. O. 32-34, Sector 17-C, Chandigarh. The term of the reference was :—

Whether the termination of services of Shri Sishpal Singh was justified and in order? If not, to what relief is he entitled?

After receiving this reference notice was issued by the Labour Court, Rohtak to the parties. The parties appeared and filed their pleadings. The case of the workman according to Demand Notice and claim statement is that he joined on 16th June, 1975 as Tractor Driver and was working at Rorekalan in December, 1980. His services were terminated without serving any chargesheet or notice which is illegal and claimant is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the workman was terminated on 7th December, 1979 due to serious misconduct and after enquiry conducted by the manager of the station and the claimant was found guilty of serious misconduct the same was sent to the Managing Director, who terminated the service of the workman due to serious charges.

On the pleadings of the parties, the following issues were framed :—

1. Whether termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

The case was transferred by the Government,—vide his order No. I(79)80-I-Lab, dated 20th October, 1981, which was received in this Court in the month of December, 1981. After that the evidences of both the parties were taken and my findings is as under :—

ISSUE NO. 1 :—

On this issue the representative of the respondent argued that as stated by Shri Nirmal Singh Gill, Manager of the respondent management as MW-2 that on 4th December, 1979 the Kitchen Incharge

Shri Madan Lal was asked to bring fuel wood from village Munak and he was sent with tractor which was driven by Shri Manohar Lal. The tractor has to go to Karnal for some official purposes and driver was asked to load fuel wood from Munak village on his return. On his return Shri Manohar Lal, Tractor Driver and Shri Madan Lal, Kitchen Incharge loaded the fuel wood from Munak village, there they met the claimant Shri Sishpal Singh under the influence of alcohol. He snatched the tractor from Shri Manohar Lal and started driving at a very high speed. As the claimant was under the influence of alcohol, he was not properly driving and there was a danger of overturn of the tractor. They both requested the claimant and stopped the tractor and both of them got down from the tractor. Shri Madan Lal started walking on the road on foot on which the claimant drove the tractor on the road behind him to crush. Shri Madan Lal left the road and ran through the fields and came to the witness and told the whole story. The Manager Shri Nirman Singh Gill witness went at the spot with another tractor with other workers. He stated in his statement that he found the claimant sitting on the seat of the driver and Shri Manohar Lal was sitting at the road. They requested the claimant to leave the seat but he abused all of them including the manager, and then they all overpowered him and got vacated the seat of the driver. As the claimant was under the influence of alcohol so he behaved very rudely. The manager ordered for starting the tractor and the claimant forcibly sat in the other tractor in which other persons were sitting. In this way they came at the farm and the manager made the enquiry against the claimant and on the next day morning when the workers were fallen for work the claimant was asked to take pardon but he refused. He also refused to take the charge-sheet which is attached with the written statement as annexure 'B' on which Shri Jai Singh, Shri Jaswant Ram and Jaswant Singh, signed for the denial of the charge-sheet. After this enquiry the manager sent the report to the Managing Director. He passed the order as annexure "A" for termination of service of the claimant. He argued that there is nothing wrong in the termination of the claimant because of his rude behaviour with the manager and with the other workman and also stated by Shri Sardari Lal, Assistant Manager as MW-1 in the Court. Assistant Manager has supported the statement of the manager Shri Nirmal Singh and the workman's representative could not brake the case of the respondent in any way. On the other hand the workman has produced no workman or witness to support his case. If there was no such thing then he should produce the other workers at the farm to brake the case of the respondent. The workman simply gave the demand notice and came before this Court to give his statement only, and did not prove anything in the case. So the termination of the workman was genuine and according to law. The person like claimant cannot be tolerated when he dis-obey and abuses the superior officers.

The representative of the workman argued on this issue that the claimant joined the service of the respondent in the year 1975 as Tractor Operator. In the way in which his services were terminated was not legal. If the claimant was under the influence of alcohol and has misbehaved and abused the Manager and other co-workers, there should be proper enquiry against the person and after that some action could be taken. No proper enquiry was done by the respondent and the order of termination is illegal in the eye of law.

After hearing the arguments of both the parties, and going through the file I am of the view that the respondent has fully proved their case of termination and proved that the claimant was under influence of alcohol and misbehaved the co-workers and the manager. The manager made the enquiry and the statements of others co-workers were recorded by the manager and the same were sent with comments to the Managing Director. After going through the enquiry file the Managing Director has taken the right action against the claimant. The workman if was not guilty of any misbehaviour or misconduct and was not drunken on that day he should have produced the witness of the village to prove this fact that he was victimized due to some reason. The workman has not stated in his statement any thing against the manager that he was the enemy of the claimant and wants to turn out the service. When there is no allegation on the management in the claimant statement, demand notice or in the statement of the workman in the Court, there is no enmity proved on the file why the manager made the enquiry against the workman and reported the same to Managing Director. The management has produced the original enquiry report in the Court and showed him the statement of the other workman who were misbehaved and beaten up by the claimant. In these circumstances, the order made by the Managing Director of the respondent is proper and justified. So the workman is not entitled to any relief. So this issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 21st May, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endorsement No. 1197, dated 2nd June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.